

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ALBERT KWOK-LEUNG KWAN,)
)
 Defendant.)
 _____)

CASE NO. CR06-305 TSZ

ORDER ON DETENTION

Offense charged:

Possession of a Machine Gun, in violation of Title 18, U.S.C., Sections 922(c)(1) and 924(a)(2).

Dates of Detention Hearings: September 13 and September 15, 2006

The Court, having conducted a contested detention hearing pursuant to Title 18 U.S.C. § 3142(f), and based upon the factual findings and statement of reasons for detention hereafter set forth, finds that no condition or combination of conditions which the defendant can meet will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. The Government was represented by William Redkey. The defendant was represented by Joseph Conte and Eric Stahlfeld.

ORDER ON DETENTION- 1

FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

A Posing a Risk of Danger and Flight by a History of Non-compliance with Federal Law.

1. The (unsworn) ¹ testimony of Investigator Perkins, of the Alcohol, Tobacco and Firearm Department of the Justice Department (hereinafter referred to as “ATF”) presented largely uncontested facts as follows:

(a) Mr. Kwan has held three federal firearm licenses in this state and has been required to follow federal firearms regulations. Each of the licenses require ATF administrative oversight and as a consequence, two of the licenses have not been renewed and one has expired. Additionally, Mr. Kwan was advised by ATF of the necessity that he comply with all state and federal firearms laws and regulations on more than one occasion.

(b) The primary reason for the AFT denial of license renewals was that Mr. Kwan was not engaged in the manufacturing of firearms or ammunition sales, as the licenses permitted.

(c) Secondly, AFT found compliance violations after inspection of the premises where the firearms were held. Non-compliance took two forms: (1) a records review showed his failure to pay a regulatory tax for twenty (20) firearms; and (2) no showing that Mr. Kwan was engaged in manufacturing, or re-manufacturing of firearms. Mr. Kwan later admitted in a deposition that the firearms were for his personal use and not for the business of manufacturing as his application for the license attests.

¹When the Court inquired of the investigator, there was no objection to his being unsworn by the AUSA, nor by both defense counsel.

1 (d) Third, an audit and records reviews of specific sales of firearms
2 showed important deficiencies that Mr. Kwan failed to document the acquisitions
3 and dispositions (sales) of a number of firearms. Additionally, ATF uncovered
4 “Brady Bill,” Title 18 U.S. 922 et seq., violations by Mr. Kwan’s failure to
5 conduct background checks for the sales of an unknown number of firearms.

6 (e) Audit investigators present during the audit characterize Mr. Kwan’s
7 behavior as uncooperative. *This was unequivocally disputed by defense counsel,*
8 *Stahlfeld, who was also present during the audit.*

9 (f) ATF reported a violation in Mr. Kwan’s transfer of numerous firearms
10 between Idaho and Washington. ATF found that the transfers were conducted in
11 violation of federal and state laws/regulations. *The defense contests this.*

12 2. In 2000, U.S. Border and Customs found a total of fifty (50) weapons
13 secreted in a compartment within Mr. Kwan’s vehicle while crossing the Canadian
14 border into the United States. The firearms were not reported by defendant to customs
15 officials.

16 3. The Government characterized Mr. Kwan as uncooperative in his compliance
17 with this Court’s subpoena to appear before the Grand Jury in the investigation of the
18 death of AUSA Thomas Wales as not an insignificant matter. A material witness
19 warrant garnered Mr. Kwan’s first two appearances before the grand jury. Defense
20 counsel indicated that Mr. Kwan asserted his Fifth Amendment rights therein. This
21 assertion of Fifth Amendment rights continued in three later appearances before the
22 same Grand Jury.

23 4. The Pre-Trial Services Division of the Court revealed real estate holdings and
24 general employment background. Mr. Kwan owns two properties located in Bellevue
25 and one in Boise, Idaho. His familial ties to the United States consists of one brother in

1 Washington, however their contact appears to be minimal if not non-existent. While he
2 is employed as a real estate broker and independent contractor for a Bellevue firm, no
3 one from the community has come forward to illustrate or attest to any significant
4 associational or personal ties here. While he identifies himself as an active U.S.
5 reservist with top secret security clearance, little else is known about Mr. Kwan or his
6 lifestyle, other than his travel to China to study linguistics..

7 5) Mr. Kwan's travel and his possession of an airplane also triggers concerns of
8 flight risk. It has been learned from the Galvin Flying Services, where Mr. Kwan's
9 plane is stored, that there are insufficient controls on his access or use of the airplane.
10 These concerns also highlight how easy travel by private plane can assist Mr. Kwan to
11 flee from this jurisdiction. For example, Galvin has told Pretrial Services Officer,
12 Brenda Amundsen that Mr. Kwan could charter one of their planes or even a helicopter
13 and be flown into Canada, Nova Scotia, etc., for Mr. Kwan (or any customer for that
14 matter) is not required to show any travel paperwork prior to departure. They simply ask
15 the customer if they have the appropriate documentation to clear customs and get back
16 into the United States, and right now the only necessary identification documents are
17 picture ID and a birth certificate. Moreover, by renting a plane from their flight school,
18 he has at his disposal the ability to fly anywhere without a paperwork check, especially
19 since his information is on record. A flight plan would not have to be provided. Even if
20 a court order barred him from the flight school altogether, and he were to charter a plane,
21 Galvin is only required to check the TSA no-fly list. If the person is on the list, they are
22 banned from flying them.

23 6) The Government also indicated that persons such as Mr. Kwan can easily
24 access Canada with merely a show of his driver's license and birth certificate—without
25 the necessity of a passport.

1 7) Mr. Kwan possesses over 200 weapons as part of his personal cache or gun
2 collection. They are stored in his home. Removal of these weapons means moving over
3 3000 pounds of weaponry.

4 B. No Reasonable Assurances Exist To Ensure Compliance with Court
5 Appearance Orders.

6 The Court has weighed the numerous aspects of any potential release order, such
7 as active GPS tracking (limited to within the United States); halfway house placement
8 until storage of his weapons is accomplished; surrender of his pilot's license and
9 notification of the company leasing his plane to prohibit his use; and, curtailing his travel
10 with the surrender of his United States, United Kingdom and Hong Kong passports.
11 However, these safeguards are insufficient to meet the risks of flight and danger that
12 Mr. Kwan presents. Moreover, the removal of his gun collection alone present
13 dangerous foreseeable outcomes.

14 Here, Mr. Kwan is the subject of a felony prosecution of possessing a machine
15 gun and a conviction for this charge will likely cause him substantial financial
16 consequences, the loss of liberty and the permanent disposal/forfeiture of his weapons.
17 The record shows that Mr. Kwan has been non-compliant with reporting requirements
18 and concealed weapons while crossing the U.S. and Canadian border despite having
19 knowledge of firearms and customs requirements. While the border incident was not
20 referred for criminal prosecution, the conduct is deeply concerning and uncontested.
21 Each of these violations occurred while Mr. Kwan possessed federal firearms licenses
22 and thus giving him the authority to sell firearms and ammunition, locally and globally.

23 His legal obligations, however, require exacting record keeping, particularly of
24 acquisitions and dispositions of firearms for a showing of reliability and trustworthiness.
25 This is in doubt. *A fortiori*, unreported transportation of firearms and weapons sales and

1 purchases are not insignificant in terms of presenting a danger to the community.

2 Overall, the record I have before me creates an inference that Mr. Kwan has a
3 lifestyle that breeds a great sense of independence, in part based upon his real estate
4 assets, the extent and worth of his gun collection, his documented travel outside the
5 United States and his lack of community or associational (non-financial) ties to this
6 jurisdiction. Moreover, conditions on travel become exceedingly more complicated
7 when one has access to his own plane as well as the wherewithal to charter a small plane
8 to flee this jurisdiction, this country or to go underground.

9 Notwithstanding the presumptions for release found in the Bail Reform Act, this
10 Court is not satisfied that reasonable assurances exist to outweigh the risk of flight given
11 this state's proximity to the U.S. Canadian border and danger that the defendant poses
12 given his past conduct in violation of federal firearms regulations.

13 **It is therefore ORDERED**

- 14 (1) The defendant shall be detained pending trial and committed to the custody
15 of the Attorney General for confinement in a correction facility separate, to
16 the extent practicable, from persons awaiting or serving sentences or being
17 held in custody ending appeal;
- 18 (2) The defendant shall be afforded reasonable opportunity for private
19 consultation with counsel;
- 20 (3) On order of a court of the United States or on request of an attorney for the
21 Government, the person in charge of the corrections facility in which the
22 defendant is confined shall deliver the defendant to a United States
23 Marshal for the purpose of an appearance in connection with a court
24 proceeding; and
25

1 (4) The clerk shall direct copies of this order to counsel for the United States,
2 to counsel for the defendant, to the United States Marshal, and to the
3 United States Pretrial Services Officer.

4 DATED this 18th day of September, 2006.

5
6 

7 MONICA J. BENTON
8 United States Magistrate Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25